

Nov 16, 2023

SEAN F. MCAVOY, CLERK

Vanessa R. Waldref
United States Attorney
Eastern District of Washington
Tyler Tornabene
Dan Fruchter
Jeremy J. Kelley
Assistant United States Attorney
Post Office Box 1494
Spokane, WA 99210-1494
Telephone: (509) 353-2767

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

RICHARD ZANE ROSALES,

Defendant.

Case No: 2:23-cr-00118-TOR

Pretrial Diversion Agreement

Plaintiff, United States of America, by and through Vanessa R. Waldref, United States Attorney for the Eastern District of Washington, and Dan Fruchter, Tyler Tornabene, and Jeremy Kelley Assistant United States Attorneys, as well as Defendant, Richard Z. Rosales, and Defendant's counsel, Joseph W. Kuhlman, agree to the following Pretrial Diversion Agreement (the "Agreement"):

I. Overview and Information

1. On July 10, 2023, the United States Attorney's Office for the Eastern District of Washington notified Defendant Richard Z. Rosales that the United States Air Force Office of Special Investigations (AF-OSI) was investigating Defendant for wire fraud, in violation of 18 U.S.C. § 1343.

1 2. Defendant Richard Z. Rosales waives indictment and consents to the
2 filing of a one-count Information (the Information) in the United States District Court
3 for the Eastern District of Washington, charging Defendant with one count of Wire
4 Fraud, in connection with the Covered Conduct, as set forth below.

5 3. Defendant stipulates and agrees that Defendant did in fact violate 18
6 U.S.C. § 1343 and that the United States could prove Defendant's guilt beyond a
7 reasonable doubt. Defendant wishes to accept responsibility for this conduct.
8 Accordingly, Defendant stipulates and agrees to the following facts, referred to herein
9 as the "Covered Conduct":

10 a. The Economic Injury Disaster Loan ("EIDL") program was a
11 federal government relief program that provides low-interest funding to small
12 business, renters, and homeowners affected by declared disasters. To receive an EIDL
13 and/or an EIDL Advance for COVID-relief, a qualifying business must submit an
14 application to the Small Business Administration ("SBA") with information about the
15 applicant's operations including the number of employees and gross revenues and
16 costs of goods in 12-months preceding January 31, 2020.

17 b. The Paycheck Protection Program ("PPP") was a federal
18 government COVID relief program that provided low-interest, forgivable loans to
19 qualifying small businesses to help businesses weather the devastating economic
20 effects of the COVID pandemic. Only businesses, not individuals, were eligible to
21 receive PPP Loans. However, a self-employed individual (*i.e.*, a sole proprietor) could
22 be eligible to receive a PPP loan of up to \$20,833 if that sole proprietorship had made
23 an annual profit of \$100,000 or more in 2019 or 2020.

24 c. On or about June 2020, Defendant was employed as an Airman
25 with the United States Air Force. Defendant was not self-employed (*i.e.*, was not a
26 sole proprietor) and had not been self-employed in 2019 or 2020.

27 d. In June 2020, Defendant's former roommate and fellow Airman
28 Taylor J. Kendall ("Kendall") approached Defendant and offered him an

1 “opportunity.” Kendall requested Defendant’s personal and banking information. On
2 June 29, 2020, Defendant provided Kendall with his United Services Automobile
3 Association (“USAA”) bank account information. Defendant also sent his Navy
4 Federal Credit Union banking account information to Kendall after Kendall reported
5 an error with Defendant’s USAA account.

6 e. On or about June 29, 2020, EIDL Application #3307358561 was
7 created and submitted on behalf of Defendant requesting a EIDL Advance for
8 \$10,000.00. The Application falsely and fraudulently stated that the owner “Zane
9 Rosales” was a sole proprietor in the agricultural industry of the business “Richard
10 Rosales,” which formed in April of 2017. The Application was supported by false and
11 fictitious statements claiming “Richard Rosales” had ten employees as of June 29,
12 2019, its gross revenues for the 12-month period prior to January 31, 2020, were
13 \$55,500.00, and that its costs of goods sold for the 12-month period prior to January
14 31, 2020, were \$55,100.00.

15 f. A few weeks after the EIDL application was submitted, Defendant
16 received about \$10,000.00 to his Navy Federal Account from the SBA as part of the
17 EIDL Advance program. Defendant asked Kendall about the funds and Kendall
18 informed Defendant that it was a grant.

19 g. In or about April 2021, and after receiving the \$10,000 EIDL
20 Advance from EIDL Application #3307358561, Defendant was approached by
21 Jadarrius Cross (“Cross”), an Airman with whom Defendant was acquainted. Cross
22 offered Defendant an “opportunity,” in exchange for which he asked for Defendant’s
23 name, phone number, social security number, and bank information. Defendant agreed
24 and knowingly provided Cross with the information.

25 h. Shortly after Defendant’s exchange with Cross, Defendant
26 received a “welcome” text message from Kendall. Defendant understood that Cross
27 and Kendall were working together to facilitate the “opportunity.” Defendant provided
28

1 Kendall a copy of his driver's license and financial information to Kendall upon
2 request.

3 i. On or about April 4, 2021, PPP Loan Application #28180254 was
4 submitted by Kendall on behalf of Defendant requesting a PPP Loan in the amount of
5 \$20,832.00. The Application falsely and fraudulently stated that Defendant was the
6 sole proprietor of the company "Richard Rosales," which was formed in 2019. The
7 Application was supported by a false and fraudulent document that purported to be a
8 copy of the Schedule C from Defendant's 2019 tax return. The false and fraudulent
9 Schedule C indicated that Defendant earned a gross profit of \$104,500.00 in 2019 as a
10 sole proprietor in the Finance Management industry. The Schedule C and Loan
11 Application contained Defendant's true and correct Social Security Number.

12 j. At some point on or about April 4, 2021, Kendall provided
13 Defendant a link to complete a form related to the "opportunity." Defendant
14 electronically filled out and electronically signed the forms.

15 k. Pursuant to the false and fraudulent PPP Loan Application
16 described above, PPP Loan #6725268700 was approved by the SBA on or about April
17 4, 2021, and was disbursed on or about April 4, 2021 to Defendant's bank account at
18 Navy Federal Credit Union.

19 l. Before receiving any funds from the PPP Loan, Defendant asked
20 Kendall if the "opportunity" was in fact a PPP Loan. Kendall confirmed that it was.
21 Kendall did not provide instructions on how to spend the loan. At the time, Defendant
22 knew that he did not own or operate a business, and thus, that he would not be eligible
23 for any grant for businesses or for a PPP Loan. To the best of Defendant's knowledge,
24 Cross and Kendall also knew that Defendant was employed by the United States Air
25 Force as an Airman and that Defendant was not self-employed and did not operate a
26 sole proprietorship or any other business. At the time, Defendant did not qualify for a
27 PPP Loan because he did not own, run, or manage any business, sole proprietorship or
28 otherwise.

1 m. After Defendant received the loan funds, Kendall requested that
2 Defendant pay Kendall a portion of the loan proceeds in exchange for Kendall's
3 submission of the loan. Defendant accordingly paid Kendall \$10,000 through Zelle
4 and Cash App, which are Internet-based peer-to-peer money transfer applications, in
5 the weeks following Defendant's receipt of the loan proceeds in exchange for
6 Kendall's submission of the Loan Application. Defendant used the remaining \$10,000
7 to upgrade his vehicle and pay for wedding vendors.

8 4. On authority from the Attorney General of the United States, through
9 Vanessa R. Waldref, United States Attorney for the Eastern District of Washington,
10 prosecution in the Eastern District of Washington for the Covered Conduct shall be
11 deferred for 48 months. This 48-month period begins on the date this Agreement is
12 signed by both parties and accepted by the Court. If Defendant fulfills his entire
13 restitution obligation as described in Paragraph 8, *infra*, prior to the end of the 48-
14 month period, the Agreement may be accelerated to terminate as early as 24 months
15 from the date the Agreement is signed by both parties and accepted by the Court.

16 5. The United States and Defendant stipulate and agree that the Court will
17 maintain jurisdiction over this matter and that the Court shall be the final arbiter as to:
18 (1) whether a party breached this Agreement, and if so; (2) the appropriate remedy,
19 which may include either terminating the Agreement or modifying its terms. A
20 modification may include extending the Agreement's 48-month period by an
21 additional 12 months, for a total of 60 months, or accelerating the Agreement to
22 terminate in as early as 24 months if Defendant fulfills his restitution obligation, as
23 described in Paragraphs 4 and 8.

24 II. Terms

25 Defendant stipulates and agrees to the following terms:

26 6. **Waiver of Constitutional Rights.** Defendant, by entering this
27 Agreement, agrees to waive certain constitutional rights including (1) the right to a
28 jury trial; (2) the right to see, hear, and question witnesses; (3) the right to compel

1 witnesses to testify; (4) the right to remain silent at trial; and (5) the right to testify at
2 trial. Defendant knowingly and voluntarily waives the above rights.

3 7. **Supervision.** Defendant stipulates and agrees to be supervised by the
4 U.S. Probation Office during this 48-month period (or longer, if the period is extended
5 by the Court). Further, Defendant understands the following:

- 6 a. Defendant shall not violate any federal, state, or local law. This term
7 does not apply to minor civil infractions such as speeding.
- 8 b. If Defendant is arrested or has any official contact with law
9 enforcement in a civil or criminal investigative capacity, Defendant
10 shall notify Defendant's supervising pretrial diversion officer within
11 two business days.
- 12 c. Defendant shall live within the jurisdiction of the Eastern District of
13 Washington. If Defendant seeks to reside outside the District,
14 Defendant shall notify and seek the approval of Defendant's
15 supervising pretrial diversion officer so that appropriate arrangements
16 in light of the Agreement can be made.
- 17 d. Defendant shall maintain employment in a lawful occupation. When
18 out of work, Defendant shall notify Defendant's supervising pretrial
19 diversion officer. In the event that Defendant becomes self-employed,
20 Defendant shall provide evidence of such self-employment.
- 21 e. Defendant shall report to Defendant's supervising pretrial diversion
22 officer as directed by the Court or U.S. Probation. Any failure to abide
23 by the reporting requirements as established by the Court or U.S.
24 Probation shall be deemed a violation of the Agreement.
- 25 f. Defendant shall not possess, control, consume, and/or use any illegal
26 controlled substance, including marijuana, nor own, possess, or have
27 access to any firearm, ammunition, destructive device, or dangerous
28 weapon (i.e., anything that was designed, or was modified for, the

specific purpose of causing bodily injury or death to another person, such as nunchakus or tasers), unless it has been disclosed to, and approved by, U.S. Probation.

g. Defendant will allow the probation officer to visit at any time at Defendant's home or elsewhere and will permit the probation officer to take any items prohibited by the conditions of supervision that he or she observes in plain view.

h. Defendant shall abide by any other conditions imposed by Defendant's supervising pretrial diversion officer.

8. **Restitution.** As an express condition of this Agreement and the promises made by the United States herein, Defendant agrees to make full restitution to the United States Small Business Administration (SBA) and the loan servicer, as follows:

a. Defendant agrees to repay the loan servicer, Capital Plus Financial, LLC, or the SBA as may be directed, the remaining amount owed on PPP Loan #6725268700, which presently amounts to \$20,832.00 in principal, \$25.65 in interest, and \$214.94 in unpaid late charges incurred since August 30, 2022, for a total restitution amount of \$21,072.59.

b. Defendant agrees to repay the SBA its \$2,500.00 Lender Fee.

c. Defendant agrees to repay the SBA the EIDL Advance payment obtained from EIDL Application #3307358561, which presently amounts to \$10,000.

d. Defendant agrees to abide by the repayment schedule for Loan #6725268700 and #3307358561 as determined by the SBA and/or loan servicer. Defendant agrees to make timely and complete payments according to the repayment schedule.

e. Defendant agrees that his obligation to make full restitution of \$33,572.59 continues until full restitution is made and agrees that he

1 is obligated to make full restitution of \$33,572.59 regardless of
2 whether he breaches this Agreement.

- 3 f. Until Defendant's restitution obligations are paid in full, Defendant
4 agrees to fully disclose all assets in which Defendant has any interest
5 or over which Defendant exercises control, directly or indirectly,
6 including those held by a spouse, nominee, or third party.
- 7 g. Defendant voluntarily agrees that the United States may immediately
8 record a lien against all property and rights to property of the
9 Defendant, which shall be released upon full payment of the
10 restitution balance.
- 11 h. Defendant agrees that if he fails to make restitution payments as
12 provided in this Paragraph, the United States shall be entitled to the
13 entry of a money judgment against the Defendant in the amount of the
14 outstanding balance. The parties further agree that if a money
15 judgment is entered, the United States shall be entitled to discovery in
16 aid of collection of the money judgment.
- 17 i. Defendant understands the Treasury Offset Program ("TOP") collects
18 delinquent debts owed to federal agencies. If the Defendant fails to
19 make his restitution payments as agreed in this Paragraph, he shall be
20 enrolled in TOP and TOP may take all or part of Defendant's federal
21 tax refund, federal retirement benefits, or other federal benefits and
22 apply these monies to Defendant's restitution obligations.
- 23 j. Defendant understands that if the Defendant fails to make his
24 restitution payments as agreed in this Paragraph, the United States
25 may pursue any available remedies to ensure the restitution obligation
26 is satisfied, including, but not limited to, garnishment and/or
27 execution against available funds, wages, or assets.
28

1 9. **Tolling.** Defendant stipulates and agrees to toll the running of all
2 applicable statutes of limitations and any time-based defenses for the Covered
3 Conduct. This tolling shall run from the date the Agreement is signed by all parties
4 until the Agreement expires or is terminated by the Court. Defendant stipulates and
5 agrees that the Agreement's tolling provision does not abridge or curtail the applicable
6 statute of limitations in any way, but rather extends the applicable statute of
7 limitations by the period of time that the Agreement is in effect.

8 Defendant further expressly waives indictment and all rights to a speedy
9 indictment and/or trial pursuant to the Sixth Amendment of the United States
10 Constitution, 18 U.S.C. § 3161, Federal Rule of Criminal Procedure 48(b), and any
11 applicable Local Rules of the United States District Court for the Eastern District of
12 Washington for the period during which this Agreement is in effect.

13 10. **Breach.** If the Court, after a hearing, terminates the Agreement based on
14 a breach by Defendant, the United States may resume its prosecution against
15 Defendant as to the charge(s) under investigation, and any additional charges.

16 11. **Admissibility of the Agreement in Prosecution.** In the event that the
17 Court terminates the Agreement based on a breach by Defendant, Defendant stipulates
18 and agrees that the Agreement and Defendant's admissions contained therein shall be
19 admissible against Defendant at any trial, sentencing, or other related proceeding.

20 The United States stipulates and agrees to the following:

21 12. **Deferred Prosecution and Dismissal.** The United States stipulates and
22 agrees to defer prosecution of the above-captioned matter for a period of 48 months
23 (or up to 60 months if the Agreement is extended). When and if Defendant satisfies all
24 the requirements of the Agreement (including any modifications or extensions), the
25 United States stipulates that it will seek dismissal with prejudice of the Information
26 filed against Defendant pursuant to this Agreement. Except in the event of a violation
27 by Defendant of any term of this Agreement, the United States will bring no
28 additional charges against Defendant relating to Defendant's conduct as described in

1 the Information and the Covered Conduct set forth above. This agreement does not
2 provide any protection against prosecution for any crimes except as set forth above.
3 Defendant and the United States understand that the Court must approve deferral
4 under the Speedy Trial Act, in accordance with 18 U.S.C. § 3161(h)(2). Should the
5 Court decline to defer prosecution for any reason: (1) both the United States and
6 Defendant are released from any obligation imposed upon them by this Agreement;
7 and (2) this Agreement shall be null and void, except for the tolling provisions set
8 forth herein.

9 **III. Approvals and Signatures**

10 Agreed and submitted on behalf of the United States Attorney's Office for the
11 Eastern District of Washington.

12
13 Vanessa R. Waldref
14 United States Attorney

15 
16 _____
17 Tyler Tornabene
18 Assistant U.S. Attorney

11/16/23

Date

18 
19 _____
20 Dan Fruchter
21 Assistant U.S. Attorney

11/16/23

Date

21 
22 _____
23 Jeremy J. Kelley
24 Assistant U.S. Attorney

11/16/23

Date

1 I have read the Agreement and have carefully reviewed and discussed every
2 part of the agreement with my attorney. I understand and voluntarily enter into this.
3 Furthermore, I have consulted with my attorney about my rights, I understand those
4 rights, and I am satisfied with the representation of my attorney in this case. I
5 understand the terms and conditions of the Agreement and agree to comply with them.

6 
7

8 Richard Z. Rosales
9 Defendant


Date

10 
11

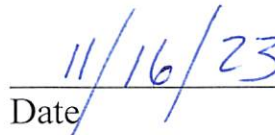
12 Joseph W. Kuhlman
13 Attorney for Defendant


Date

14
15 Approved without passing judgment on the merits or wisdom of this diversion.

16 
17

18
19 United States District Judge


Date